

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

REGINALD FALICE (#13754-058),

Plaintiff,

v.

“LIE EVERY TIME,”

Defendant.

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CIVIL ACTION NO. H-06-2377

ORDER OF DISMISSAL

Plaintiff Reginald Falice is an inmate in custody of the United States Bureau of Prisons at the federal penitentiary in Beaumont, Texas. Falice appears *pro se* and he has not paid the filing fee. He seeks a declaratory judgment. Because Falice is not entitled to proceed *in forma pauperis*, this case will be **dismissed** pursuant to 28 U.S.C. § 1915(g) for reasons set forth briefly below.

Under 28 U.S.C. § 1915(g), a prisoner is not allowed to bring a civil action *in forma pauperis* in federal court if, while incarcerated, three or more of his civil actions or appeals have been dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g); *Adepegba v. Hammons*, 103 F.3d 383, 385 (5th Cir. 1996). An exception to the impediment imposed by § 1915(g) applies only where the pleadings show that the inmate is in imminent danger of serious physical injury. *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

Prior to executing the complaint in this case, at least three actions or appeals filed by

Falice have been dismissed as frivolous, malicious, or for failure to state a claim: *See, e.g., Falice v. Smith*, No. 03-CV-155 (E.D.Va. Aug. 13, 2003) (dismissing complaint as frivolous); *Falice v. Mullen*, No. 01-CV-455 (W.D.N.C. Aug. 23, 2001) (dismissing complaint for failure to state a claim, noting that prior suit had been dismissed as frivolous, and imposing sanctions for “continued conduct of filing baseless, seemingly malicious lawsuits”); *Falice v. Walker*, No. 00-CV-619 (W.D.N.C. Jan. 8, 2001) (dismissing complaint for failure to state a claim). Thus, Falice is no longer eligible to proceed *in forma pauperis* as a result of the strikes against him. *See Falice v. Mullen*, No. 03-7085, 2004 WL 1249140 (4th Cir. June 7, 2004).

Falice was convicted of interstate domestic violence resulting in bodily injury and death, as well as a related firearms charge, following a jury trial in the United States District Court for the Western District of North Carolina. *See United States v. Falice*, No. 00-4559, 2001 WL 1082447 (4th Cir. Sept. 17, 2001) (affirming the conviction). He is presently serving a life sentence as the result of that conviction.

In this case, Falice seeks declaratory relief from a policy allegedly imposed by the trial judge in his underlying case, the Honorable Graham C. Mullen, which requires him to “lie every time.” Falice argues that the requirement that he and others conducting business in Judge Mullen’s court must “lie every time” is “egregiously flagrant and against policy.” The pleadings show that the plaintiff is not in imminent danger of physical injury and that he fails to fit within an exception to § 1915(g).

Moreover, the Court notes that the claim made by Falice is malicious because it


repeats allegations made in other cases filed previously by him in the federal courts. *See, e.g., Falice v. Lie Every Time*, Civil Action No. 1:06-0241 (E.D. Tex. 2006) (dismissed as barred by 28 U.S.C. § 1915(g)). Because the suit filed by Falice is malicious and abusive, as well as barred by § 1915(g), the Court concludes that summary dismissal is warranted.

Accordingly, the Court **ORDERS** as follows:

1. This case is **DISMISSED** under 28 U.S.C. § 1915(g). Alternatively, the complaint is **DISMISSED** as malicious.
2. The plaintiff is **WARNED** that he will face sanctions, including monetary penalties, if he continues to abuse judicial resources by filing frivolous, malicious pleadings in the federal courts.

The Clerk will provide a copy of this order to the plaintiff. The Clerk shall also provide a copy of this order by mail to the Warden, USP Beaumont, U.S. Penitentiary, P.O. Box 26030, Beaumont, TX 77720, and by fax 409-626-3700.

SIGNED at Houston, Texas, on **July 20, 2006**.


Nancy F. Atlas
United States District Judge